

2010 Jul-19 PM 03:17
U.S. DISTRICT COURT
N.D. OF ALABAMA

AO 243 (Rev 2/95)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District NORTHERN DISTRICT OF ALABAMA
Name of Movant PIERRE FALGOUT	Prisoner No. 26533-001	Case No. 6:08-CR-0157-RDP-RR-A-1
Place of Confinement USP TUCSON - 9300 SOUTH WILMOT ROAD, TUSCON, AZ, 85706		
UNITED STATES OF AMERICA		PIERRE FALGOUT (name under which convicted)
MOTION		
<p>1. Name and location of court which entered the judgment of conviction under attack U.S. DISTRICT COURT - NORTHERN DISTRICT OF ALABAMA BIRMINGHAM, ALABAMA</p> <p>2. Date of judgment of conviction 4/29/2008 CV-10-P-8037-J</p> <p>3. Length of sentence 11,520 MONTHS</p> <p>4. Nature of offense involved (all counts) SEXUAL EXPLOITATION OF CHILDREN</p> <p>5. What was your plea? (Check one)</p> <div style="display: flex; align-items: center;"> <div style="margin-right: 10px;"> (a) Not guilty (b) Guilty (c) Nolo contendere </div> <div style="display: flex; flex-direction: column; align-items: center;"> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> </div> </div> <p style="margin-top: 20px;">If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:</p> <p>6. If you pleaded not guilty, what kind of trial did you have? (Check one)</p> <div style="display: flex; align-items: center;"> <div style="margin-right: 10px;"> (a) Jury (b) Judge only </div> <div style="display: flex; flex-direction: column; align-items: center;"> <input type="checkbox"/> <input type="checkbox"/> </div> </div> <p>7. Did you testify at the trial? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>		

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9. If you did appeal, answer the following:

(a) Name of court UNITED STATES 11TH CIRCUIT COURT OF APPEALS

(b) Result CONVICTION AFFIRMED

(c) Date of result 5/21/2009

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court

(2) Nature of proceeding

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result

(6) Date of result

(b) As to any second petition, application or motion give the same information:

(1) Name of court

(2) Name of proceeding

(3) Grounds raised

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result

(6) Date of result

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one:

SEE Attachment #1

Supporting FACTS (state *briefly* without citing cases or law):

B. Ground two:

SEE Attachment #2

Supporting FACTS (state *briefly* without citing cases or law):

C. Ground three:

SEE Attachment #3

Supporting FACTS (state *briefly* without citing cases or law):

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D. Ground four:

*SEE Attachment #4*Supporting FACTS (state *briefly* without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

Because ineffective Counsel and the fact I was given the same lawyer for direct appeal so that it was conflict of interest

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

☒ (a) At preliminary hearing

*Gregory J. Reid
861 Odom Circle POB 1394
Gardendale, AL 35701*

☒ (b) At arraignment and plea

(c) At trial

☒ (d) At sentencing

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(e) On appeal

(f) In any post-conviction proceeding

(g) On appeal from any adverse ruling in a post-conviction proceeding

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

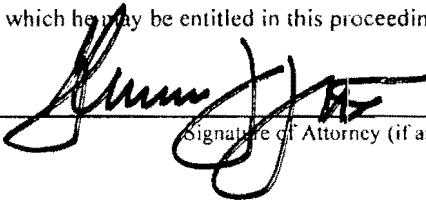
(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) Give date and length of the above sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

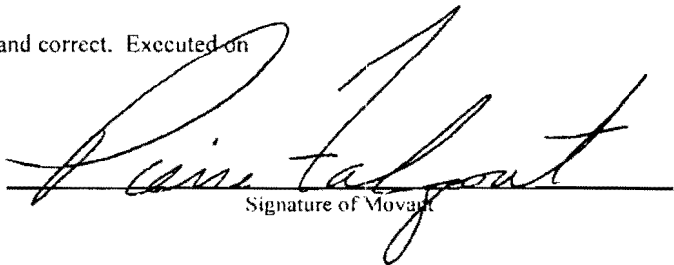


Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

7/16/10

Date



Signature of Movant

ATTACHMENT 1

- (a) Conviction obtained by plea of guilty which was entered without knowledge of the nature of the charge and the consequences of the plea.
 (b) Conviction obtained by use of coerced confession!

#1

I was never allowed to see evidence. It was held in another county. The only way I was allowed to see it is if I went to trial told this by Mr. Reid (This is a constitutional Right)

I was told if I didn't plea to the production on that day (Thurs) that they would add possession charges for each. to show good on threat they Super Seeded two more production charges (Now I know they couldn't have added the possession because it would be double J)

I NEVER would of plead guilty to all counts if I knew the truth of what I was looking at. I was told 15-30 for 1 charge with 32 counts and if I did not take it to trial and since I had No criminal history I would get low end by taking responsibility for my part. I was told this over 4 visits. I received from Mr. Reid over a years time

I was not told by the judge when he accepted my guilty plea about rule 11 (H) maximum possible penalty

There was no benefit for me to plead guilty to all Things I admit & Things I don't admit to

The only charges that were dropped were the ones that the charged & convicted cop took from search unlawfully

#1

A/B 2

I didn't waive duplicity argument by pleading guilty. I wasn't told I had this right to wave

I was misled. No one would plea out knowing he or she was looking at 960 years.

Anyone that knew he had a duplicity argument would not have waived it but keep it as a right to appeal.

The subject of concurrent/consecutive was never brought up.

By having a 960 yr or 11,000 month sentence I'm treated different, with less class options and programs. Someone with a life sentence 540 months has more programs + chances such as cooking classes, computer programs, etc etc.

ATTACHMENT 2

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure

#2 the evidence used (supposable) against me was tampered with by law officer he was convicted for his actions. That's why the state had to drop case against me but the fed were able to use this same evidence against me.

The search was based on a drug warrant that was old here say also it did not cover the media that was took XX ✓

Conviction obtained by evidence I never was allowed to see

Reid said there was no way he could take this to trial but would not step down from the case he only saw me 2+ times before deciding to pled out

He was inexperienced to handle any Sex Offense of this nature

more less bankruptcy lawyer

ATTACHMENT 3

#3

They did not show or tell that I was Not in any photos or did I have sexual relations with anyone at any time.

I did not get to see the evidence

it was not made aware of my bipolar disorder or that I was mental unstable at the time. Which could have been proved.

I was not allowed to argue my PSI because I would not have been accepting my responsibility. To get credit for responsibility I had to accept all in PSI as facts

my PSI was done without ~~any~~ input from me it was basis + and done with conflict of interests.

it was not disclosed that of both (2) computers that neither had ANY child porn whatsoever and that the "photo's" had not been produced visual

ATTACHMENT 4

#4

He (Reid) only saw me 4 times over a years time average 30-45mins total time less than 1 work day to consult & advise me of a possible 960 sentence which was never spoke of

Reid did not file a motion to strike duplicative counts nor did he make me aware I would be waving this right by pleading

Simply I was coerced & mislead by the chosen information I was given to mulitplate me into a plea that ^{was} no benefit to me only the gov

He never responded to ANY of my letters
Never accepted any phone calls

over 7.0
with 15-6
pages over

He told me I could not argue my PSI and still be accepting responsibility So by not being able to argue my PSI I was saying all is fact and That is simply not true. I had over 6 pages f+b that were simply facts to show PSI Kimberly Franklin was writing her own thoughts and nothing else

I was not allowed to see evidence

He did not move to strike counts
He did not motion to dismiess the counts because they were simple numbers not photos on a ditagl memory stick.

(g) Conviction obtained by a violation of the protection against double jeopardy.

He did not object to any Comment to Anythin
Preston's Object's to his work